

IN THE UNITED STATES TAX COURT

In the matter of:)
ELMER JON BUCKARDT,)
Petitioner,) Docket No. 22131-10
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

Courtroom 4
Nakamura U.S. Courthouse
1010 5th Avenue
Seattle, Washington

Thursday,
September 15, 2011

The above entitled matter came on for bench
opinion, pursuant to notice, at 12:42 p.m.

BEFORE: HONORABLE DIANE L. KROUPA
Judge

APPEARANCES:

For the Petitioner:

(No Appearance.)

For the Respondent:

(No Appearance.)

P R O C E E D I N G S

(12:42 p.m.)

THE CLERK: Calling from page 10 of the
calendar, Docket No. 22131-10, Elmer Jon Buckardt.
(Whereupon, a bench opinion was rendered.)

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1 Bench Opinion by Judge Diane L. Kroupa

2 September 15, 2011

3 Buckardt v. Commissioner Docket No. 22131-10

4 THE COURT: The Court has decided to render
5 oral findings of fact and opinion in this case, and
6 the following represents the Court's oral findings of
7 fact and opinion. The oral findings of fact and
8 opinion shall not be relied upon as precedent in any
9 other case.

10 This bench opinion is made pursuant to the
11 authority granted in § 7459(b) and Rule 152. All
12 section references are to the Internal Revenue Code as
13 amended and in effect for 2008, the year at issue, and
14 all Rule references are to the Tax Court's Rules of
15 Practice and Procedure.

16 This is a deficiency case in which
17 Petitioner again asserts that he is not liable for
18 income tax. Elmer Jon Buckardt appeared on his own
19 behalf, and Lisa M. Oshiro appeared on behalf of
20 Respondent.

21 Findings of Fact. Petitioner resided in
22 Stanwood, Washington, at the time he filed the
23 petition. He is a retired airline pilot. Petitioner
24 was married in 2008, but he and his wife did not file
25 joint returns.

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1 Petitioner is no stranger to this Court. He
2 has filed multiple petitions with this Court. He
3 filed two petitions in 2004 at Docket Nos. 10591-04
4 and 16074-04. Both were dismissed for failure to
5 state a claim.

6 He filed a petition in 2007 at Docket No.
7 27949-07 with respect to three taxable years. In that
8 case he litigated deficiencies related to payments in
9 similar amounts from the same payee as in this case.
10 The Commissioner prepared substitute returns, and Mr.
11 Buckardt subsequently filed purported returns
12 containing zeros for all dollar amounts except for the
13 standard deduction and personal exemption.

14 The Court found in our prior Memorandum
15 Opinion, Buckardt v. Commissioner, T.C. Memo 2010-145,
16 that Mr. Buckardt was liable for the deficiencies and
17 certain penalties. The Court warned Petitioner that
18 his arguments as to the taxability of his income were
19 frivolous and that he would subject himself to a
20 penalty under § 6673 if he appeared and made the same
21 arguments. Petitioner has appealed that case to the
22 Court of Appeals for the Ninth Circuit.

23 Petitioner has two cases currently pending
24 before this Court. The case at Docket No. 29924-09L
25 was heard earlier this year with respect to a ~~notice~~ *collection actions*

1 ~~of federal tax lien filing~~ as to Mr. Buckardt's ~~2000~~
2 income tax liability^{ies} and his penalty^{ies} for submitting
3 frivolous returns in^{2000,} 2001 and 2002. AK

4 In the present case, Petitioner again
5 contests whether payments to him from State Street
6 Retiree Services for Northwest Airlines, Inc. Pension
7 Plans (State Street) are taxable income. Petitioner
8 received \$98,600 from State Street in 2008, as he had
9 in other years. Petitioner filed a return for 2008
10 and reported zero income except for \$46 of interest
11 income.

12 In addition, Petitioner attached a Form
13 4852, the standard fare by which tax protestors zero
14 out their income, as well as the Form 1099-R provided
15 to him by State Street. Petitioner claimed that he
16 received no taxable income.

17 Respondent issued Petitioner a statutory
18 deficiency notice with respect to the \$98,600 received
19 from State Street and determined that Petitioner was
20 liable for a \$19,299 deficiency in federal income tax
21 and a \$3,860 accuracy-related penalty under § 6662 for
22 2008.

23 Petitioner timely filed a petition with this
24 Court asserting various reasons that he is not liable
25 for the deficiency and penalty. At trial, Respondent

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1 filed a Motion to Impose Penalty Pursuant to I.R.C.
2 § 6673(a). Petitioner moved for a continuance to
3 consider the § 6673 motion, which we denied.

4 Opinion. We begin with the fundamental
5 principle of tax litigation that the Commissioner's
6 determinations in the deficiency notice are presumed
7 correct and taxpayers bear the burden to establish
8 those determinations are incorrect. See Rule 142(a),
9 Welch v. Helvering, 290 U.S. 111, 115 (1933). The
10 presumption applies here as the 1099-R from State
11 Street has been provided and Petitioner admits having
12 received that amount from State Street. See Hardy v.
13 Commissioner, 181 F.3d 1002, 1004-1005 (9th Cir. 1999)
14 affg. T.C. Memo 1997-97.

15 Pension and annuity income is includable in
16 gross income. Sec. 61(a)(9), (11). Petitioner failed
17 to provide testimony or other evidence that the funds
18 he received were not includable in his income. At
19 trial, he argued that he had filed a return, that the
20 return was valid and that once a return is valid it is
21 forever valid. He urges the Court to find no
22 liability against him despite the amount of income he
23 received. We need not discuss Petitioner's erroneous
24 positions at length. See Wnuck v. Commissioner, 136
25 T.C. No. 24 (2011). We sustain Respondent's

1 deficiency determination.

2 We next address whether Petitioner is liable
3 for the accuracy-related penalty under § 6662.
4 Section 6662(a) imposes a penalty equal to 20 percent
5 of any underpayment of tax that is due to either
6 negligence or disregard of rules or regulations or a
7 substantial understatement of tax. See § 6662(a),
8 (b) (1) and (2).

9 The record demonstrates that Petitioner's
10 underpayment was due to negligence and/or disregard of
11 the rules as we found him liable for tax on payments
12 in the same amount and from the same payee in prior
13 years. The record also demonstrates that Petitioner's
14 understatement of income tax with respect to his
15 receipt from State Street was substantial within the
16 meaning of § 6662(d).

17 Moreover, Petitioner failed to present any
18 documents or information to show that his substantial
19 understatement was due to reasonable cause and not
20 willful neglect. Petitioner advanced only frivolous
21 and groundless arguments. In view of the foregoing,
22 we sustain Respondent's determination that Petitioner
23 is liable for the accuracy-related penalty.

24 We now address whether it is appropriate to
25 impose a penalty against Petitioner under § 6673,

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1 which authorizes the Tax Court to require a taxpayer
2 to pay to the United States a penalty up to \$25,000
3 whenever it appears that proceedings have been
4 instituted or maintained by the taxpayer primarily for
5 delay or that the taxpayer's position in such
6 proceedings is frivolous or groundless. See § 6673,
7 Scruggs v. Commissioner, T.C. Memo 1995-355, affd.
8 without published opinion 117 F.3d 1433 (11th Cir.
9 1997).

10 We note that the type of arguments
11 Petitioner raises have been deemed by this Court to be
12 frivolous and/or sanctionable under § 6673. The Court
13 is aware that Petitioner has pursued these arguments
14 before this Court in the past. Apparently our prior
15 warning to Petitioner has not deterred him from
16 wasting the Court's and Respondent's limited time and
17 resources. The purpose of § 6673 is to compel
18 taxpayers to think and to conform their conduct to
19 settled tax principles. Coleman v. Commissioner, 791
20 F.2d 68, 71 (7th Cir. 1986). See also Grasselli v.
21 Commissioner, T.C. Memo 1994-581.

22 In this proceeding now before the Court,
23 Petitioner asserts nothing but frivolous and
24 groundless arguments. It is apparent from the entire
25 record that Petitioner instituted or maintained this

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1 proceeding primarily, if not exclusively, as a protest
2 against the federal income tax system, and his
3 proceeding in this Court is merely a continuation of
4 Petitioner's refusal to acknowledge and satisfy his
5 tax obligations. We are convinced that no purpose
6 would be served in repeating all that has been said
7 about his frivolous and misguided arguments.

8 We are also convinced that Petitioner is
9 aware of the warnings this Court has given to him and
10 to taxpayers who provide the type of arguments
11 Petitioner provided in this case, yet Petitioner
12 remains undeterred. We therefore shall require
13 Petitioner to pay a penalty of \$25,000 pursuant to
14 § 6673(a)(1).

15 In addition, we take this opportunity to
16 admonish Petitioner that the Court will consider
17 imposing another such penalty if Petitioner returns to
18 the Court and advances similar arguments in the
19 future.

20 To reflect the foregoing, decision will be
21 entered for Respondent and a \$25,000 penalty will be
22 imposed against Petitioner under § 6673.

23 This concludes the Court's oral findings of
24 fact and opinion in this case.

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1 (Whereupon, at 12:55 p.m., the bench opinion
2 in the above-entitled matter was concluded.)
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